

Cleveland County Board of Commissioners
April 12, 2019

The Cleveland County Board of Commissioners reconvened from their April 12, 2019 regular meeting for a public hearing on this date, at the hour of 1:00 p.m. in the Commission Chamber of the Cleveland County Administrative Offices.

PRESENT: Susan Allen, Chairman
Ronnie Whetstine, Vice-Chair
Johnny Hutchins, Commissioner
Doug Bridges, Commissioner
Deb Hardin, Commissioner
Brian Epley, County Manager
Elliot Engstrom, Senior Staff Attorney
Phyllis Nowlen, Clerk to the Board
Kerri Melton, Assistant County Manager
Chris Green, Tax Administrator
Perry Davis, Emergency Management Director/Fire Marshal

CALL TO ORDER

Chairman Allen called the meeting to order and Commissioner Hutchins provided the invocation and led the audience in the Pledge of Allegiance.

AGENDA ADOPTION

ACTION: Commissioner Hutchins made the motion, seconded by Commissioner Bridges and unanimously approved by the Board to, *approve the agenda as presented.*

PUBLIC HEARINGS

COMMERCIAL SOLAR FACILITIES CODE OF ORDINANCE

Chairman Allen recognized Chris Martin, Senior Planner to present the Commercial Solar Facilities Ordinance. At the February 11, 2019 public hearing, Commissioners voted unanimously to enact a sixty-day commercial solar moratorium and asked staff to evaluate and look for possibilities to improve the solar facility ordinance due to research showing Cleveland County had significantly more solar facilities than surrounding counties. Also, during that time, the Planning Board has received several new applications that indicated solar facilities were greatly growing in size. Direction was given to the Planning Department to evaluate details such as screening, setbacks, landscaping, emergency access, etc. The Planning Board held three work sessions to thoroughly review and discuss the ordinance. During those meetings perspectives from members of the Agricultural Advisory Board, representatives from the solar industry, Emergency Management staff and other input was heard. The Planning Board has reached a final draft of the Commercial Solar Facilities Code of Ordinance that will be compatible with the solar facilities and its surrounding areas. Mr. Martin reviewed the following changes to the solar ordinance:



Board of Commissioners- Direction

Evaluate standards including:

- Setbacks & Screening
- Emergency access
- Decommissioning
- Bonding requirements



Aesthetics: Setbacks & Screening

Old Ordinance: 50 Feet setbacks & line of evergreen trees planted at 6 feet tall along property lines

- New Ordinance:**
- 100 feet minimum setback
 - 200 feet setback from roads, houses, or residentially zoned properties
 - 500 feet setback from arterial roads (18, 180, 226, Hwy74, etc.)
 - Natural woodland area consisting of pine trees, ornamental evergreens, and hardwoods planted at 100 feet depth to help the property blend in with the surrounding area
 - Landscape plan required and signed by Landscape Architect showing compliance
 - Boundary Survey required by Professional Surveyor



Current Screening: Line of Evergreens, 50' from right-of-way



Samples of Natural Woodland Area & Deeper Setbacks



Safety

Old Ordinance: Security fencing required

- New Ordinance:**
- Battery Storage facilities are prohibited
 - Security fencing required
 - Facility contact information posted at gates and renewed each year
 - Emergency Access plan approval by Emergency Management
 - Shall demonstrate compliance with NCDEQ, EPA, and ESA (Endangered Species Act)



Decommissioning

Old Ordinance: Decommission plan required & must be decommissioned after discontinued

- New Ordinance:**
- Plan required to be signed by Professional Engineer
 - Plan shall include the estimated decommissioning cost including salvage value
 - Surety Bond shall be posted for 125% of net decommissioning (decommission cost minus salvage value), or 25% of cost excluding salvage value, whichever is greater
 - Decommissioning plan and Surety Bond shall be renewed every 5 years



Mr. Martin introduced Max Hopper, Chairman of the Planning Board. Mr. Hopper commented on the hard work, long hours and thoroughness members of the Planning Board have put to review and critique the solar facilities ordinance. He also commended the county’s planning staff for their professionalism and what a pleasure it has been working with them. Solar facilities are a growing industry. The Board feels trying to keep a balance within the county will be important. Duke Power Corporation, one of the largest users of solar power in Cleveland County, asked at the latest Board of Adjustment meeting to have some of the new conditions added to their requirements for new installation. The Planning Board unanimously recommended the amended solar ordinance to the Board of Commissioners.

Chairman Allen opened the floor to the Board for comments or questions. Each Commissioner thanked the Planning Board for the hard work and effort that went into the amended solar facilities ordinance.

Chairman Allen opened the Public Hearing at 1:17 pm for anyone wanting to speak for or against the Solar Moratorium. (*Legal Notice was published in the Shelby Star on Friday, March 29, 2019 and Friday, April 5, 2019*).

Roland Allen, S Lafayette St., Shelby – spoke neither for or against the solar facilities code of ordinance. He stated the ordinance doesn't go far enough with restrictions to solar facilities. Mr. Allen has had several difficulties in the past with constructions of new facilities and wants to ensure discrepancies aren't left out in future construction. He spoke of other concerns such as possible environmental contamination from damaged and aged panels, the noise that is produced, who is responsible to acquiring the permit to build and who is responsible for the decommission of the solar facilities.

Chairman Allen asked Mr. Martin if he had any information that would address Mr. Allen's concerns. Mr. Martin advised with the new ordinance, many of the inconsistencies and items are addressed and rectified.

Stephen Bishop, 2056 Pleasant Church Hill Rd, Shelby – is the Department Head for the Soil and Water Conservation and is the county representative for the Agricultural Advisory Board. The Ag Advisory Board has met several times recently in regards to solar facilities. Planning Board members and Planning staff have also attended those meetings and vice versa. Mr. Bishop thanked the Planning Board and staff for the tremendous amount of time and work that has gone in to amend the solar facilities ordinance. Moving forward, if more solar facilities come into Cleveland County at an advanced rate, the Ag Advisory Board will recommend the Commissioners cap the size of the facilities to one hundred fifty acres. Currently there is a minimum size requirement of ten acres but no limit to the maximum size. Many farmers who rent land depend on large tracks of acreage. The Ag Advisory Board would like assistance at the state level in advocating the reduction of the seventy percent tax credit solar facilities received from the state. Mr. Bishop thanked the Board for their continued support of farming in Cleveland County.

Hearing no further comments, Chairman Allen closed the Public Hearing at 1:29 pm.

Chairman Allen opened the floor to the Board for questions or discussion. Commissioner Hardin asked if the new ordinance will have any effect on the existing solar facilities. Mr. Martin advised it will not, it will only effect new facilities being permitted. Commissioner Hutchins inquired if the new ordinance will apply to facilities located with the municipalities; Mr. Martin advised no, only facilities located in the county's jurisdiction.

ACTION: Commissioner Hardin made a motion, seconded by Commissioner Bridges, and passed unanimously by the Board to, *adopt the amended commercial solar facilities ordinance.*

Objectives

- Enhance the aesthetics for better compatibility of surrounding properties
- Ensure emergency access
- Ensure the decommissioning of abandoned facilities

Sec. 12-160. - Solar electric power generation.

The following development standards shall apply to the construction of any solar facility designed to generate electricity for a commercial purpose. Any solar facility on properties less than ten (10) acres, and or any solar facility containing battery storage shall be prohibited:

- A site plan, signed and sealed by a professional engineer licensed pursuant to Chapter 89C of the General Statutes shall be prepared in accordance with section 12-33(a). The site plan shall show the location of any structures within one hundred (100) feet of the property line, and it shall also demonstrate compliance with the other standards in this section.
- A landscape plan, signed and sealed by a professional landscape architect licensed pursuant to Chapter 89A of General Statutes shall be prepared demonstrating compliance with this chapter.
- Natural woodland buffering shall be installed between the security fence and adjacent non-participating property and the road right-of-way, prior to the operation of any solar equipment. Natural Woodland Buffering shall be planted at a depth of one hundred (100) feet consisting of species native to Cleveland County with a mixture of ornamental evergreen trees.
 - The aforementioned natural woodland buffer area shall consist of a maximum 75% native pine trees.
 - Trees within the natural area shall be installed at a minimum of one (1) tree per 100 square feet. Use of existing vegetation is encouraged.
 - In addition to the above mentioned density requirements ornamental evergreen trees shall be installed within the natural woodland buffer one (1) tree per three hundred (300) square feet.
 - Ornamental evergreen trees shall be installed at six (6) feet planted height.
 - Reference Nonnative Invasive Plants of Southern Forest by the United States Department of Agriculture for examples of species.
- Security fencing shall be installed around the perimeter of the solar facility. The fencing shall be a minimum of six (6) feet in height, chain link or other fencing sufficient to ensure no public access, and equipped with a gate and locking mechanism.
- Setbacks shall be measured from the security fencing:
 - One hundred (100) feet from any non-participating property;
 - Two hundred (200) feet from any street right-of-way, habitable dwelling, or residentially zoned property.
 - Five Hundred (500) feet from the right-of-way of any arterial street; and

including a decommissioning plan, relieves the landowner of the obligation to remove the equipment as outlined in the Conditional Use or Zoning permit.

- The decommissioning plan must be renewed, signed, and notarized by the facility owner/operator and the land owner every five (5) years from the time the permit is issued, or upon any change of the solar facility ownership or land ownership.
- An estimated net cost of decommissioning, inclusive of salvage proceeds, is required and shall be prepared by a professional engineer, licensed pursuant to Chapter 89C of the General Statutes. The estimated net cost shall be revised on each decommissioning plan renewal every five (5) years and should account for inflation, deflation, and depreciation.
- Decommissioning shall include, but not necessarily be limited to the removal and disposal of solar panels, buildings, cabling, electrical components, roads, fencing, and any other associated facilities down to thirty-six (36) inches below grade. Further, the land shall be reasonably rehabilitated unless an agreement is reached with the land owner to leave as is.
- Prior to the issuance of any building permits or electrical permits, a surety bond naming Cleveland County as beneficiary shall be posted for one-hundred and twenty-five percent (125%) of the estimated net cost of decommissioning established within the approved Decommissioning Plan, or twenty-five percent (25%) of the estimated decommissioning cost excluding salvage value, whichever is greater. The surety bond shall be renewed every five (5) years at the same time the decommissioning plan is renewed.
- The Cleveland County Planning Department shall perform a re-validation inspection at minimum once every five (5) years from the date of the issuance of a permit to ensure that the solar facility remains in compliance with all standards of this chapter and the surety bond is valid.
- A copy of the sales contract for electricity, with any information made confidential by state or federal law redacted, shall be submitted to the Cleveland County Planning Department prior to obtaining a building permit, naming the buyer of electricity, the seller of electricity, and the beginning and end dates of the contract.
- If the owner/operator of the solar facility fails to ensure the removal of the equipment within six (6) months after commercial power production ceases for a period of twelve (12) continuous months, the landowner shall be in violation of the Conditional Use or Zoning permit, and be subject to the penalties set forth in section 12-94.
- Each day that the violation continues after notification to the landowner by the administrator, shall be considered a separate offense for purposes of penalties and remedies.

j. Enforcement by injunction, abatement and liens.

- In addition to any other remedies or enforcement methods allowed by any law, if a violation continues under section 12-94, the violation may be enforced by an order of

4. One thousand (1,000) feet from the right-of-way of a NCDOT Scenic Byway.

- Maintenance: Natural woodland buffer, fencing, gates and warning signs shall be maintained in good appearance and safe operating condition. The site shall be compliant with the adopted ordinance and all approved permits until the facility is decommissioned pursuant to subsection (i) below.
- Emergency Access: Current contact information for the facility owner and lessee if applicable, shall be posted at a visible location at each gate accessing the facility including:
 - Name,
 - Contact phone number,
 - Address,
 - Emergency contact phone number.

Facility owner shall further file an annual statement by February 1 of each year with the Cleveland County Planning Department containing the information listed in subsections (1) through (4) above.

- Federal, State, and Local Requirements: Following issuance of a conditional use or zoning permit and prior to issuance of a building permit for construction of a new solar facility, the applicant shall supply documentation to the Cleveland County Planning Department that all necessary federal, state, and local approvals have been obtained and notifications have been made pursuant to applicable federal and state requirements for building a new solar facility. At a minimum, these shall include:
 - A Boundary Survey signed and sealed by a professional surveyor licensed in North Carolina showing compliance with the standards of this chapter submitted to the Planning Department;
 - A site plan showing emergency access shall be submitted to and approved by the Cleveland County Emergency Management;
 - Official documentation demonstrating compliance with any permitting required from the North Carolina Department of Environmental Quality (NCDEQ);
 - Official documentation demonstrating compliance with any permitting required from the National Environmental Policy Act (NEPA);
 - Official documentation demonstrating compliance with the Endangered Species Act (ESA).
- Decommission:
 - A decommissioning plan shall be signed and sealed by a professional engineer licensed pursuant to Chapter 89C of the General Statutes and submitted to the Cleveland County Planning Department prior to the issuance of a zoning permit or conditional use permit (example provided at the end of this Section 12-160): the decommissioning plan must be signed and notarized by both the owner/operator of the solar facility and the land owner. However, nothing about the issuance of a Conditional Use or Zoning permit,

abatement issued by the general court of justice for failure of the landowner to correct the unlawful condition of the property. Upon issuance of an abatement order by the general court of justice, a landowner must comply with the order within the time limit specified. If the landowner fails to do so, the county may take steps necessary to correct the condition of the property. The cost to correct the condition shall be a lien on the property in the nature of a mechanic or material man lien.

- The equipment which remains shall be deemed abandoned and salvaged for the cost of decommissioning.
- Should the salvage value exceed the cost of decommissioning, the balance shall be placed with the office of the clerk of court for abandoned funds.

(Ord. of 4-5-16(1))

Example of the Decommissioning Plan

Decommission Plan for Big Bright Solar ("Facility"), located at _____
Prepared and Submitted by _____, the owner of Big Bright Solar
This decommissioning plan is presented as required by Subsection 12-160(f) of the Cleveland County Code.

Decommissioning will occur as a result of any of the following conditions:

- The land lease ends;
- The system does not produce power for 12 months; or
- The system is damaged and will not be repaired or replaced

The owner of the Facility, as provided for in its lease with the landowner, will do the following as a minimum to decommission the project.

- Remove all non-utility owned equipment, conduits, structures, fencing, and foundations to a depth of at least three feet below grade.
- Remove all graveled areas and access roads unless the owner of the leased real estate requests in writing for it to stay in place.
- Restore the land to a condition reasonably similar to its condition before SES development, including replacement of top soil removed or eroded.
- Re-vegetate any cleared areas with warm season grasses that are native to the Piedmont region, unless requested in writing by the owner of the real estate to not re-vegetate due to plans for agricultural planting.

All said removal and decommissioning shall occur within 12 months of the facility ceasing to produce power for sale.

The Facility Owner, currently _____, is responsible for this decommissioning. Nothing in this plan relieves any obligation that the real estate property owner may have to remove the facility as outlined in the Conditional Use Permit in the event the operator of the facility does not fulfill this obligation.

The owner of the Facility will provide the Cleveland County Planning Department and the Register of Deeds with an updated signed decommissioning plan within 30 days of change in the Facility Owner. This plan may be modified from time to time and a copy of any modified plans will be provided to the Cleveland County Planning Department and filed with the Register of Deeds by the party responsible for decommissioning.

Facility Owner Signature: _____ Date: _____
Landowner (if different) Signature: _____ Date: _____

(Ord. of 4-5-16(1))

ADJOURN

There being no further business to come before the Board at this time, Commissioner Hardin made a motion, seconded by Commissioner Whetstine, and unanimously adopted by the Board, ***adjourn the meeting***. The next meeting of the Commission is scheduled for ***Tuesday, April 16, 2019 at 6:00 p.m. in the Commissioners Chambers***.

*Susan Allen, Chairman
Cleveland County Board of Commissioners*

*Phyllis Nowlen, Clerk to the Board
Cleveland County Board of Commissioners*